

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RAFAEL JESUS ALMEIDA,

Plaintiff,

vs.

No. CIV 17-0461 JB/GBW

SAN JUAN COUNTY DETENTION CENTER,
WARDEN MR. HAVAL, ASST WARDEN WEBB,
and UNKNOWN NAMED OFFICERS & OFFICIALS
OF SAN JUAN COUNTY ADULT DETENTION
CENTER

Defendants.

MEMORANDUM OPINION AND ORDER
DENYING LETTER'S MOTION TO REOPEN CASE

THIS MATTER comes before the Court on the handwritten Letter from the Plaintiff Rafael Jesus Almeida to the Court, filed February 8, 2019 (Doc. 16)(“Letter”), asking the Court to reopen this case. The Court denies the motion to reopen.

Plaintiff Rafael Jesus Almeida filed his Complaint for Violation of Civil Rights on April 17, 2017. See Complaint at 1, filed April 17, 2017 (Doc. 1). At the time of filing, Almeida was incarcerated at the San Juan County Detention Center. See Complaint ¶ 1, at 2. On April 19, 2017, the Court granted Almeida leave to proceed in forma pauperis under 28 U.S.C. § 1915 and ordered him to make an initial partial payment. See Order Granting Motion for Leave at 1, filed April 19, 2017 (“Order”)(Doc. 4). The Order also notified Almeida that, after he made the initial partial payment, he would need to pay the full filing fee in monthly payments of twenty percent of the preceding month’s income credited to his prisoner’s account. See Order at 2. Almeida paid the initial partial payment, but sought an extension of time to make the requisite monthly payments.

See Motion to Extend Time, filed July 19, 2017 (Doc. 8). The Court granted Almeida's request for an extension of time and ordered him to begin making the monthly payments or show cause why the Court should excuse him from those payments no later than March 15, 2018. See Order Granting Motion to Extend Time, filed February 13, 2018 (Doc. 9) ("Second Order"). Almeida did not commence making monthly payments or show cause why he should be excused from making those payments.

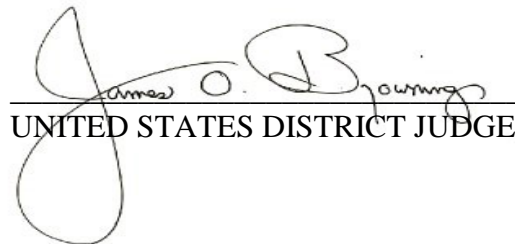
The copy of the Court's Second Order mailed to Almeida's address of record was returned as undelivered on February 22, 2018. See Mail Returned as Undeliverable, filed February 22, 2018 (Doc. 10). The Court then issued an Order to Show Cause on February 28, 2018, directing Almeida to notify the Court of a new address, or otherwise show cause why the Court should not dismiss this case, within twenty-one days of that Order's entry. See Order to Show Cause, filed February 28, 2018 (Doc. 11). The copy of the Court's Order to Show Cause mailed to Almeida's address of record also was returned as undelivered. See Mail Returned as Undeliverable, filed March 8, 2018 (Doc. 12). Almeida did not provide the Court with a new address or otherwise respond to the Court's Order to Show Cause.

The Court entered a Memorandum Opinion and Order on March 31, 2018, dismissing the case without prejudice under rule 41(b) of the Federal Rules of Civil Procedure based on Almeida's failure to commence making monthly payments and failure to advise the Court of his correct address. See Memorandum Opinion and Order, filed March 31, 2018 (Doc. 13). After almost one year had elapsed, Almeida filed his letter requesting that the Court reopen this case. See Letter at 2. Almeida's letter and envelope show that he was incarcerated at Northwestern New Mexico Correctional Facility. See Letter at 1-2. The Court sent Almeida a notice, by mail, confirming the filing of his letter request to reopen. That mailing was returned to the Court as undeliverable on

February 15, 2019. See Mail Returned as Undeliverable, filed February 15, 2019 (Doc. 17). The Court's research confirms that Almeida has been released from the New Mexico Corrections Department's custody, and he has not provided the Court with a new address. See State of New Mexico v. Rafael Jesus Almeida, No. D-1116-CR-2017-00060; D-1116-CR-2017-00160; and D-1116-CR-2017-00189.¹

The Court declines to reopen this case. Reopening a case is discretionary and is warranted only in exceptional circumstances. See Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991). Almeida presents no exceptional circumstances to support the reopening of his case. Further, even if he had presented such circumstances, reopening the case would be futile absent a current address for him. The Court has dismissed this case without prejudice. If Almeida wishes to pursue his claims, he may do so by filing a new lawsuit.

IT IS ORDERED that Plaintiff Rafael Jesus Almeida's motion to reopen the case in his Letter to the Court, filed February 8, 2019 (Doc. 16) is denied.



UNITED STATES DISTRICT JUDGE

Parties:

Rafael Jesus Almeida

Plaintiff pro se

¹The Court takes judicial notice of the official New Mexico court records in Almeida's criminal cases. See United States v. Ahidley, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007)(stating that the Court may take judicial notice of publicly filed records in this court and other courts concerning matters that bear directly upon the disposition of the case at hand).